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IN THE HIGH COURT OF DELHI

Judgment reserved on : February 04, 2009

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Judgment delivered on : February 26, 2009

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CRL.A.569/2006

REHMAN Appellant

Through: Mr. Dhananjay Puri, Advocate

versus

STATE Respondent

Through: Ms. Richa Kapoor, Advocate

CRL.A. 497/2007

ABDUL @ ABDULLA Appellant

Through: Ms. Anu Narula, Advocate

versus

STATE Respondent

Through: Ms. Richa Kapoor, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. On 29.4.2003 at 2:05 PM vide DD No.7A, Ex.PW-1/1, the Duty Officer PS Malviya Nagar recorded the receipt of information that a murder had taken place at H-12/10, Malviya Nagar. SI Ashok Kumar PW-16, accompanied by Const.Ravinder

PW-8, reached the place of occurrence and learnt that the injured Mrs.Harbans Kaur had been removed to AIIMS Hospital. SI Ashok Kumar proceeded to the aforesaid hospital.

2. At the hospital, SI Ashok Kumar learnt that the injured Ms.Harbans Kaur was brought dead to the hospital. He collected the MLC, Ex.PW-10/A, prepared by Dr.Sachinda. SI Ashok Kumar did not meet any eye witnesses at the hospital.

3. Thereafter, SI Ashok Kumar returned to the place of occurrence. He met Gurcharan Singh PW-3, the husband of the deceased and Manjit Singh PW-6, nephew of the deceased, at the place of occurrence. SI Ashok Kumar recorded the statement, Ex.PW-3/A, of Gurcharan Singh and made an endorsement Ex.PW-16/A thereon and forwarded the same through Const. Ravinder PW-8 to the police station where SI Dharam Pal, the Duty Officer at the police station recorded FIR No.346/03, Ex.PW-11/A, under Section 302 IPC at 4:25 PM.

4. At the spot SI Ashok Kumar prepared a rough site plan, Ex.PW-16/C, of the place of occurrence. He summoned Const. Giri Raj (Photographer) who took photographs, Ex.PW-5/1 to Ex.PW-5/7, of the place of occurrence; the negatives whereof are Ex.PW-5/A collectively. From the place of occurrence one blood stained handkerchief Ex.C-1, was lifted vide seizure memo Ex.PW-3/C. A cloth piece Ex.D-1, was also lifted from the spot

vide seizure memo Ex.PW-3/D. A chhura (knife) Ex.P-7 was seized vide seizure memo, Ex.PW-3/E. The sketch Ex.PW-16/D of the chhura was prepared. A wax polish Ex.F-1 was seized from the place of occurrence vide seizure memo Ex.PW-3/F. The cigarette buds lifted from the place of occurrence were seized vide seizure memo Ex.PW-3/G. A pant and a handkerchief lifted from the place of occurrence were seized vide seizure memo Ex.PW-3/H. One splash of iron, one small piece of cloth, six pieces of stones, wax polish, one white plastic pipe, two circular stones used for grinding and one wiper were collectively seized vide seizure memo Ex.PW-3/J.

5. The statement Ex.PW-3/A, made by Gurcharan Singh to the police reads as under:-

“Statement of Shri Gurcharan Singh S/o late Sardar Chamba Singh, R/o H-12/10 Malviya Nagar New Delhi Aged 77 years Ph: 26683215

I reside at the abovementioned address along with my wife Smt. Harwansh Kaur aged 72 years and my brother-in-law's son Rinku alias Manjit aged about 18 years. I am engaged in the transport business. Stone grinding work was being done in the veranda of our house by three persons who were engaged by Rinku from a construction site near our house at a contract of Rs 1,200/-. Of the three persons two used to work regularly and the third who was the contractor used to come at regular intervals to collect the money. Today i.e on 29.4.2003 at about 11:30 a.m I and Rinku had left the house for some work. My wife was left behind at home and the three workers were doing their working when we left. When I and Rinku returned back to our house at about 1:30 P.M, the construction

workers were not working in the veranda and the door to the house was locked from outside. As soon as I entered the house I found my wife lying in our drawing room in an unconscious state. Injury marks were visible on her forehead and face, a handkerchief was tied tightly around her neck and a long dagger was lying nearby. We removed the handkerchief from her neck and immediately informed the police at 100 number. That the police van took her to AIIMS hospital where the doctor declared her dead. At home contents of our almirah and bed were lying scattered around the house. That only after checking will I be able to state what all is missing from the house. That one of the workers was aged about 21-22 years, with a short height, strong built and had a fair complexion, while the second one was aged about 26-27 years, height 5'7", strong built and had a dark complexion. The third one who was the contractor was aged about 28-29 years, with a dark complexion and his height was 5'7. I can identify the accused persons if brought before me. Let the needful be done."

6. On the same day he made a supplementary statement to SI Ashok Kumar as per which he informed that 12 gold bangles, one Rani Haar, matar mala, gold rings, jhumka etc. were reported missing from the house. SI Ashok Kumar also recorded the statement Ex.PW-9/DA of Manjit Singh @ Rinku PW6, the nephew of the deceased, on the same day who stated that he had engaged three workers to come to his uncle's house for floor grinding work from a construction site near the house. That one of them was the contractor named Asir and that the other two were Abdulla and Israel. That on 29.4.2003 he left the house along with his uncle at about 11:30 am leaving his aunt Smt. Harbans Kaur alone at the house when the contractor and

the other two labourers were doing the floor grinding work at the house. That when they returned home at about 1:30 pm they found the three missing and Ms.Harbans Kaur lying on the floor of the house with a handkerchief tied around her neck.

7. SI Ashok Kumar also met Rakesh Bhardwaj PW-7 and recorded his statement Ex. PW7/DA who stated that while he was going towards the market he noted two persons walking briskly in a nervous condition. That one of them a 35-38 year old man was carrying a bag in his hand while the other man was 20-21 years old. That while during purchase he was talking to a friend of his he noted a crowd gathering in front of House No. 12/10 Malviya Nagar. He went to the house and saw the dead body of a lady lying in the drawing room.

8. Since Ms.Manjit Kaur was brought dead to the hospital her body was sent to the mortuary where Dr.Sunil Kumar Sharma PW-4, conducted the post-mortem of Harbans Kaur on 1.5.2003 and prepared the post-mortem report Ex.PW-14/A. He recorded therein the following ante-mortem injuries on the person of the deceased:-

“1. Faint ligature mark over the middle part of neck and encircle whole neck measuring 38 cm in length, 1 cm wide, on deep dissection of the neck there was extrusion of blood in sub-cutaneous and muscle.

2. One crescentic abrasion over the right forehead size 1.5 cm x 2.4 cm.

3. Two crescentic abrasion over nose size .5 x .2 cm.
 4. Multiple crescentic abrasion over left chin.
 5. Multiple mucosal abrasions over lower lip.
 6. Contuse lower lip margin size 2 cm x .5 cm.
 7. Two crescentic abrasion over left side of neck.
 8. Fracture ribs second to six."
9. On 7.5.2003 SI Ashok Kumar, during investigation, met Nazim PW-15, an auto rickshaw driver. He recorded his statement under Section 161 Cr.P.C. as per which he informed that on 28.4.2003 at about 5:30 p.m on the asking of a person he had taken a floor grinding machine from H-12/10 Malviya Nagar to E-324 Greater Kailash-II. Relevant would it be to note that he categorically told SI Ashok Kumar that he does not recollect the features of the said person at whose asking he had transported the floor grinding machine.
10. On 8.5.2003, Gurcharan Singh, husband of the deceased handed over four pages to the police containing the design of the jewellery stolen from his house on the date of incident along with receipts evidencing purchase thereof which were seized vide seizure memo Ex.PW-3/B.
11. Acting on the information given by Nazim, SI Ashok Kumar maintained surveillance at House No.E-324, G.K.-II on

8.5.2003, 9.5.2003 and 10.5.2003. On 10.5.2003 appellant Rehman was apprehended by him.

12. On interrogation, appellant Rehman made a disclosure statement Ex.PW-16/K, he revealed that on 3.4.2003 accused Asir @ Asirudin came to E-324 G.K II where Rehman was working as a construction labourer and took a floor grinding machine for construction work to H-12/10 Malviya Nagar. That he himself joined the floor grinding work at H-12/10 Malviya Nagar for a few days. That on 26.4.2003, three days prior to the incident, Mohd. Asir, Kasim and Abdul @ Abdulla who were all working at H. No.12/10 Malviya Nagar came to E-324 G.K IInd Floor and told him that the old lady who resides at house no. 12/10 Malviya Nagar had gone to a function wearing about half a kilo of jewellery. They made a plan to rob the house with the help of two other persons namely Shamim and Rafiq who were acquaintances of accused Asir. That on 28.4.2003 Mohd. Kasim@ Israeli returned the grinding machine to the accused Rehman and told him that in the evening Mohd. Asir along with other accused persons would come and do the further planning. That at about 8 pm Mohd Asir, Shamim, Kasim and Rafiq along with accused Abdul came to house No. E 324 G.K.II. As per their plan accused Abdul and Kasim@ Israeli reached H12/10 Malviya Nagar at about 9 am with a small grinding machine and he

reached B 153, Savitri Nagar, Malviya Nagar at the residence of Mohd. Asir where he met Shamim, Rafiq and Asirudin. All these persons reached the spot at 10:30 am. Rafiq, Shamim and Rehman kept sitting in a park outside the house and Mohd. Asir went inside the house. At about 11:30pm Gurcharan Singh (husband of the deceased) alongwith Rinku (nephew of the deceased) left the house in his vehicle for Gurdwara leaving behind Smt. Harvansh Kaur alone. Mohd. Asir gave a signal to the accused Rehman and all of them entered the said house. Accused Abdulla, who was already there, asked for a glass of water from Smt. Harvansh Kaur. As soon as she brought the glass of water both the accused persons along with other accomplices attacked her. Shamim showed a knife to Smt. Harvansh Kaur and threatened her not to make a noise. Mohd. Asir took out a handkerchief and strangled her with it. Rafiq kept her mouth gagged with his hand and Mohd. Asir strangled her to death. Asir then asked Shamim to keep a watch at the front door and asked him to keep a watch at the back door. That during this period accused Abdulla kept carrying on the work of floor grinding to avoid suspicion while Asir, Rafiq and Kasim ransacked the house. Thereafter he left for Savitri Nagar along with accused Shamim through the back door of the house, the other accused persons later joined them at Savitri

Nagar.

13. Pursuant to the said disclosure statement accused Rehman got recovered one red box containing a velvet purse from a room in House No.E-324, G.K.-II, New Delhi. He disclosed that he had stolen the aforementioned red box from House No. 12/10 Malviya Nagar along with the other accused persons after killing the Smt. Harbans Kaur (deceased) and that each accused took his share in the stolen cash and jewellery after the incident. The recovered articles were seized vide recovery memo Ex.PW-7/A.

14. Accused Rehman further led the police to House No.153-B Savitri Nagar where three of his other accomplices Mohd. Asiruddin @ Asir, Shamim and Israel @ Kasim were stated to be residing. None of the said three persons were present at the premises when the police reached there. Five xeroxed pages, one paper bearing the signature of Mohd. Asir, one paper pertaining to letter pad of Asiruddin, one paper pertaining to Raj Bima Nigam and the photograph of Asiruddin @Asir with his wife were seized vide seizure memo Ex.PW-2/A.

15. On 13.5.2003 SI Ashok Kumar along with his staff and accused Rehman left for police station Gooalpokhar Distt. Uttardinazpur, West Bengal in search of the other accused persons. ASI Madav Chakroverti from the local police station

joined in the search operation.

16. Appellant Abdulla @Abdul was apprehended on 15.5.2003 from his house at village Jhalpari PS Gooalpokhar Distt.Uttardinazpur, West Bengal. On interrogation he made a disclosure statement Ex.PW-16/P. In pursuance of the disclosure statement he got recovered one gold ring from a room in his house which was taken into possession vide pointing out-cum-seizure memo Ex.PW-9/B.

17. Thereafter he led the police party to the house of co-accused Asiruddin @Asir at village Kelabadi Distt. Uttardinazpur West Bengal. Asiruddin was not present in the house when the police party reached his house. However, two gold kadas, one matar-mala, two ear rings, one jhumka and one nose pin were recovered from said house vide seizure memo Ex.PW-9/A.

18. The other accused persons namely Mohd.Asir, Kasim, Shamim and Rafiq could not be traced. They were declared proclaimed offenders. On 20.7.2003 a charge-sheet under Section 302/395/397/412/34 IPC was filed against appellants Rehman and Abdul.

19. After the charge-sheet was filed an application for conducting the test identification of the jewellery recovered from appellant Abdul and from the house of Asir was filed on 29.7.2003. Manjit Singh, nephew of the deceased who had

accompanied his uncle Gurcharan Singh the husband of the deceased had accompanied him for TIP proceedings and chanced to see the accused persons when they were being taken out of court room no.29. He made another statement to the police under Section 161 Cr.P.C. informing that the two persons he had seen today were the ones seen by him working in the house of his uncle on the day of the incident. Relevant would it be to note that he specifically stated that Abdul was the man who used to come to the house regularly with Israel and Asir and that the other accused namely Rehman used to come sometimes for the grinding work.

20. Gurcharan Singh PW-3, husband of the deceased deposed that the appellants were working in his house on 29.4.2003 when he left his house along with his nephew Rinku to go to the Gurudwara and that when he returned to the house he found that the appellants were missing; his wife was lying listless. He identified the appellants in Court as the ones who were working in his house.

21. Manjit Singh PW-6 deposed that the accused persons were working in his uncle's house under the contractor engaged by him. He stated that on 29.4.2003, he along with his uncle Gurcharan Singh left their house for the Gurdwara at about 11:30 am leaving behind his aunt Mrs.Harbans Kaur alone at

home when the grinding work was being carried on. He stated that when they returned home they found Ms.Harbans Kaur lying dead in the house and the entire house had been ransacked. He deposed that none of the persons who were doing the floor grinding work were present in the house when they returned.

22. Rakesh Bharadwaj PW-7 deposed to the facts recorded in his statement under Section 161 Cr.P.C. He identified both the accused persons present in court as having seen by him leaving the house of the deceased.

23. Relevant would it be to note that the seizure memo Ex.PW-7/A pertaining to the recoveries effected from House No.E-324 GK-II New Delhi pursuant to the disclosure statement of appellant Rehman bears the signatures of PW-7 as an attesting witness. But, in his testimony he denied that a red colour box was got recovered by accused Rehman in his presence. He accepted his signatures on recovery memo, Ex.PW-7/A, but denied any knowledge of the contents thereof. He also denied any knowledge of the contents of recovery memo, Ex PW-2/A, pertaining to the Xeroxed pages recovered from House No.153-B Savitri Nagar but admitted his signatures on the said recovery memo.

24. Prem Chand PW-2, owner of house no. 153-B Savitri Nagar, the other witness to the recovery memo Ex.PW-2/A did

not support the case of the prosecution pertaining to the recoveries effected as per Ex.PW-2/A for the reason he deposed that on said day accused Rehman was not brought by the police to his house.

25. Nazim PW-15 deposed that on 28.4.2003 accused Rehman had got removed in his TSR a floor grinding machine from House No.H-12/10 Malviya Nagar to House No.E-324 Greater Kailash Part-II, New Delhi.

26. ASI Madhav Chakroverti PW-9, deposed that appellant Abdul was apprehended after he was traced in village Jharwali and that his disclosure statement was recorded in his presence and that thereafter Abdul led the police to his house and got recovered a ring which was concealed in a room meant to store grain.

27. The various police officers associated with the investigation deposed in favour of the prosecution. Needless to state SI Ashok Kumar PW-16 deposed to the investigation conducted by him and as noted above.

28. Holding that in view of the deposition of Rakesh Bhardwaj PW-7 and Prem Chand PW-2 the stated recoveries pursuant to the disclosure statement of appellant Rehman from house No.E-324 Greater Kailash Part-II, New Delhi and House No.153-B Savitri Nagar were not proved, learned Trial Judge has

held that the alleged incriminating evidence sought to be produced pertaining to the recoveries against appellant Rehman was not proved. Ignoring the same, holding that the deposition of Gurcharan Singh PW-3, Manjit Singh @Rinku PW-6, Nazim PW-15 and Rakesh Bhardwaj PW-7 inspired confidence and since PW-3, PW-6 and PW-7 deposed about the presence of Rehman in the house where the offence took place the same was sufficient to convict Rehman inasmuch as, according to the learned Trial Judge, Rehman was present in the house for the completion of the floor grinding work when PW-3 and PW-6 left the house and were seen absconding when the two returned and when he was in the process of absconding, he was seen in a nervous condition by PW-7. Finding corroboration from the deposition of Nazim PW-15 of Rehman working in the house of the deceased, it has been held that cumulatively read, the deposition of all the witnesses established the guilt of Rehman.

29. Pertaining to accused Abdul, with reference to the deposition of PW-3, PW-6 and PW-7, similar findings as noted above pertaining to Rehman have been returned against Abdul. Additionally, the recovery of a gold ring belonging to the deceased pursuant to the disclosure statement of Rehman and at his instance has been held to be incriminating evidence against appellant Rehman.

30. It is unfortunate that pertaining to appellant Rehman, the learned Trial Judge has ignored vital evidence in the form of improvements made by Manjit Singh PW-6 in his deposition in Court vis-à-vis his statements recorded by the police under Section 161 Cr.P.C. The learned Trial Judge has also over looked the apparent contradictions in the deposition of Rakesh Bhardwaj PW-7 when he identified appellant Rehman as one of the two persons he saw leaving the house where the deceased was killed. The learned Trial Judge has not considered a probability emerging from the deposition of Nazim PW-15 pertaining to Rehman having left the work a day prior i.e. on 28.4.2003. As noted hereinabove in his statement Ex.PW-9/DA made to the police on 29.4.2003 Manjit Singh PW-6 had categorically stated that on 29.4.2003 only three persons namely the contractor Asir and two workers Abdulla and Israel had come to the house and when he along with his uncle left the house at 11.30 AM only said three persons were in the house who were found missing when he and his uncle returned to the house. It is apparent that Manjit has made a material improvement by omitting the name of Israel as the second labourer working in the house and substituting the name of Rehman in his place. In this connection it is important to note that probably for the reason neither Asir nor Israel could be

apprehended by the police, much after he had made his first statement to the police on 29.4.2003, Manjit's supplementary statement was recorded on 29.7.2003 wherein he introduced the name of accused Rehman, but even in the said statement stated that Rehman used to sometimes come for the grinding work and that normally Abdul and Israel used to do the grinding work.

31. The improvement by Manjit is on a material point in issue and cannot be simply brushed aside. In this connection the deposition of Nazim PW-15 assumes significance because he has deposed that a day prior i.e. on 28.4.2003 he had transported the grinding machine from 12/10 Malviya Nagar to E-324 Greater Kailash-II New Delhi and that Rehman had accompanied him. Even as per the charge-sheet the grinding machine belonged to Rehman. This probablizes the fact that the little involvement of Rehman in the work of floor grinding came to an end on 28.4.2003 and he was not present in the house on 29.4.2003. It corroborates the first statement made by Manjit to the police that Abdul and Israel along with the contractor Asir had come to the house to complete the work on 29.4.2003.

32. Even Rakesh Bhardwaj PW-7 has been inconsistent vis-à-vis his identification of Rehman. In his statement made to the police under Section 161 Cr.P.C. on 29.4.2003 itself he stated that one out of the two persons who were seen by him

leaving the house in a perplexed mind, was carrying a bag and his age was between 30-35 years. While deposing in Court he stated that Rehman was the person who was carrying the bag. It is not out of place to note that Rehman was aged 25 years when evidence was recorded by the learned Trial Judge.

33. It is apparent that PW-6 and PW-7 have made material improvements while deposing in Court and the intention is to nail the appellant Rehman.

34. We note that the prosecution has failed to prove any recovery at the instance of the appellant Rehman.

35. Pertaining to appellant Abdulla @Abdul it is pertinent to note that in his statement made to the police on 29.4.2003 itself, Manjit PW-6 had disclosed that Abdulla along with Israel had reported for work along with the contractor Asir. This lends assurance to the deposition of PW-6 when he deposed in Court and hence is good and credible evidence apart from Gurcharan Singh PW-3 identifying him as one out of the two workers who had reported to carry on the grinding work in his house on 29.4.2003. Further, the recovery of a ring of the deceased and the fact that Abdul @Abdulla was found missing from his residence at Delhi and was traced in his village is also relevant of his conduct i.e. absconding from Delhi immediately after the offence was committed.

36. It is settled law that merely because a witness is found to be partially lying would not discredit the entire testimony of the witness. Why do witnesses conspire to involve some people falsely is a question which is difficult to answer and especially when no motive is attributed to the witness to falsely implicate an accused. A probable answer would be that when faced with a brutal crime, a human mind is too willing to spin stories out of mere suspicions. Gurcharan Singh and Manjit were naturally aggrieved by the brutal manner in which Mrs. Harbans Kaur was murdered. Their anger would naturally be directed against anyone who was associated in the work. The fire of their anger engulfed Rehman, pertaining to whom, the evidence suggests that he left the site on 28.4.2003 itself and did not come back to work on 29.4.2003. The first and the immediate statement made by Manjit to the police points towards the non-involvement of Rehman and the involvement of Israel along with the involvement of Abdul and Asir. What if Israel and Asir were also apprehended? What would Manjit have said then? It is obvious that he would have identified Israel as the second worker. What has happened is obvious. Manjit had only two accused before him during the trial as the others were proclaimed offenders. Forgetting what he had told the police immediately after the incident, Manjit has falsely inculpated

Rehman. It would not be out of place that even in his statement Ex.PW-3/A Gurcharan Singh has spoken about two workers and the contractor working in the house when he and Manjit @Rinku left the house.

37. Crl.Appeal No.569/2006 filed by appellant Rehman is allowed. He is acquitted of the charges framed against him.

38. Crl.Appeal No.497/2007 filed by appellant Abdul @Abdulla is dismissed.

39. Copy of this order be sent to Superintendent, Central Jail, Tihar for compliance in Crl.Appeal No.569/2006. If not required in any other case, Rehman is directed to be set free forthwith.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

February 26, 2009
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